



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 3, 1997

Ms. Heidi Maher  
Attorney  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR97-0003

Dear Ms. Maher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102673 and ID# 102821.

The Texas Natural Resource Conservation Commission (the "commission") received a request for "copies of the final report authored by Ms. Tina Coronado and approved by Mr. Kevin McCalla which was the bases [sic] for the [requestor's] disciplinary demotion" and "any notes taken by Ms. Coronado or Mr. McCalla." You have submitted representative samples of the requested information to this office for review.<sup>1</sup> You contend that this information is excepted from disclosure pursuant to sections 552.102, 552.103, and 552.107 of the Government Code. You additionally assert that the requested information is excepted from disclosure under the common-law right to privacy.

Section 552.103(a) excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

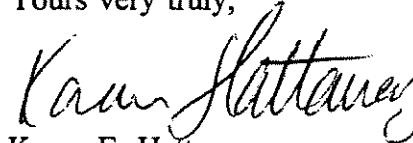
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Open Records Decision Nos. 452 (1986), 331 (1982), 328 (1982). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

Based on circumstances of which you have informed this office, you assert that the commission reasonably anticipates litigation relating to the subject matter of the requested information. We agree. Therefore, the commission may withhold the information from disclosure under section 552.103(a) of the Government Code.<sup>2</sup>

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 102673

Enclosures: Submitted documents

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<sup>2</sup>We note that once all parties to litigation have gained access to the information at issue, through discovery or otherwise, section 552.103(a) is no longer applicable. Open Records Decisions Nos. 551 (1990), 454 (1986). Further, once the litigation has concluded, section 552.103(a) is no longer applicable. Open Records Decision No. 350 (1982). Of course, once the protection of section 552.103(a) ends, the information may be excepted from public disclosure under the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied).

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